

REMARKS

Applicant is in receipt of the decision by the Board of Patent Appeals mailed March 10, 2009. Claims 2-7, 9-14, 17 and 18 have been amended. Claim 8 has been canceled. New claims 19-22 have been added. Claims 2-7 and 9-22 are now pending in the application. Reconsideration of the case is earnestly requested in light of the following remarks.

Claims 2-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Blake et al., U.S. Patent No. 5,574,854 (hereinafter “Blake”), in view of Bilger, U.S. Patent No. 6,912,429 (hereinafter “Bilger”).

In the Appeal Brief, Applicant argued that the cited art does not teach receiving a request for input from a measurement/control program and selectively routing the request for input to either a simulation program or an input device, depending on whether the system is in simulation mode or not. The Board agreed with Applicant’s argument, stating on p. 10 that “the proffered combination falls short of suggesting selectively routing the request between the simulator and the input device based upon the simulation state of the system”.

However, as discussed on pp. 9-10, the Board also found that the recitations in claim 2 of “can be configured” and “is operable” were not positive limitations and should be afforded no patentable weight. Thus, while the Board agreed with Applicant’s argument that the cited art does not teach the limitations in question, the Board also stated on p. 11 that, “the claim does not require such limitation. Consequently, we are constrained to sustain the Examiner’s rejection since Appellants’ argument fails to be commensurate in scope with the claim.”

In the current amendment, the recitations of “can be configured” and “is operable” have been removed from claim 2, and the claim has been amended to recite:

2. (Currently Amended) A system for performing a simulation, the system comprising:
 - one or more processors;
 - memory storing program instructions; and
 - an input device;

wherein the program instructions are executable by the one or more processors to:

- turn a simulation mode either on or off in response to user input;
- receive a request for input from a measurement/control program;
- determine whether the simulation mode is turned on or off; and
- selectively route the request for input, depending on whether the simulation mode is turned on or off, wherein selectively routing the request for input comprises:

- routing the request for input to a simulation program if the simulation mode is turned on;

- routing the request for input to the input device if the simulation mode is turned off.

Applicant respectfully submits that the claim as now written does require the limitations of receiving a request for input from a measurement/control program and selectively routing the request for input to either a simulation program or an input device, depending on whether the simulation mode is turned on or off. Applicant thus respectfully submits that the amended claim 2 is patentably distinct over the cited art, as found by the Board of Patent Appeals.

The Board also stated on p. 11:

In deciding this appeal, we have considered only those arguments that Appellants submitted in the Appeal and Reply Briefs. Arguments not submitted herein are deemed to have been waived. ... Appellants did not provide separate arguments with respect to the rejection of claims 3 through 18. Appellants are reminded that merely repeating the language of the claim does not constitute a separate argument. Therefore, we select independent claim 2 as being representative of the cited claims. Consequently, claims 3 through 18 fall together with representative claim 2. 37 C.F.R. 41.37(c)(1)(vii).

Thus, the Board did not consider the patentability of the independent claims 17 and 18 separately from claim 2 because Applicant did not provide separate arguments for these claims, and they were treated as falling with claim 2.

Applicant notes that the amended claim 17 recites:

17. (Currently Amended) A method for performing a simulation, the method comprising:

- turning a simulation mode either on or off in response to user input;
- executing a measurement/control program;

- executing a simulation program, wherein the simulation program executes to simulate a system;
- receiving a request for input from the measurement/control program;
- determining whether the simulation mode is turned on or off; and
- selectively routing the request for input, depending on whether the simulation mode is turned on or off, wherein selectively routing the request for input comprises:
 - routing the request for input to the simulation program if the simulation mode is turned on;
 - routing the request for input to an input device if the simulation mode is turned off.

Applicant respectfully submits that claim 17 requires the limitations of receiving a request for input from the measurement/control program and selectively routing the request for input to either the simulation program or the input device, depending on whether the simulation mode is turned on or off. Accordingly, Applicant respectfully submits that claim 17 is patentably distinct over the cited art for reasons similar to those discussed by the Board with respect to claim 2. Inasmuch as the independent claim 18 requires similar limitations, Applicant respectfully submits that claim 18 is also patentably distinct over the cited art.

Applicant thus respectfully submits that all of the independent claims are in allowable form. Since the independent claims have been shown to be patentably distinct over the cited art, Applicant respectfully submits that the dependent claims are also patentably distinct for at least this reason.

CONCLUSION

Applicant submits the application is now in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-42901/JCH.

Also enclosed herewith is the following item:

☒ Request for Continued Examination

Respectfully submitted,

/Jeffrey C. Hood/

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